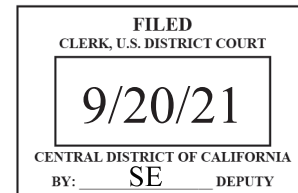


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Attorneys for Relator and Plaintiff-Relator

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[UNDER SEAL],

Plaintiffs,

v.

[UNDER SEAL],

Defendants.

CASE NO. CV 18-08311-ODW (AS)

DECLARATION OF ELIOT J. RUSHOVICH
IN SUPPORT OF *EX PARTE* APPLICATION
FOR LEAVE TO FILE FOURTH AMENDED
COMPLAINT

[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C. §§
3730(b)(2)]

[FILED/LODGED CONCURRENTLY
UNDER SEAL: *EX PARTE* APPLICATION
FOR LEAVE TO FILE FOURTH AMENDED
COMPLAINT; [PROPOSED] ORDER;
[PROPOSED] FOURTH AMENDED
COMPLAINT]

[FILED IN CAMERA AND UNDER SEAL
PURSUANT TO 31 U.S.C. § 3730(b)(2)]

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Attorneys for Relator and Plaintiff-Relator

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex
rel. IONM LLC, a Delaware
corporation and ex rel. JUSTIN
CHEONGSIATMOY, M.D.; STATE
OF CALIFORNIA ex rel. IONM LLC,
a Delaware corporation and ex rel.
JUSTIN CHEONGSIATMOY, M.D.;
LOS ANGELES COUNTY ex rel.
IONM LLC, a Delaware corporation
and ex rel. JUSTIN
CHEONGSIATMOY, M.D.; and
JUSTIN CHEONGSIATMOY, M.D.,
in his individual capacity,

Plaintiffs,

vs.

UNIVERSITY OF SOUTHERN
CALIFORNIA, a California
corporation;

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1 7. The TAC has not been served yet on Defendants because this case remains
2 under seal pending completion of the government's ongoing investigation.

3 8. Litigation has not commenced, discovery has not yet begun and no case
4 management order has been issued.

5 9. The TAC includes as the Seventeenth Cause of Action a placeholder for a
6 cause of action under the Private Attorney General Act ("PAGA"), stating therein, among
7 other things, that Plaintiff-Relator has notified the Labor Workforce Development
8 Agency (the "LWDA") and Defendant University of Southern California of his intent to
9 sue under PAGA but is awaiting the conclusion of the statutory period during which the
10 LWDA could notify him of whether it intended to investigate.

11 10. The statutory period has since concluded and Plaintiff-Relator has received
12 no notice from the LWDA of an intent to investigate.

13 11. Labor Code § 2699.3(a)(2)(C) specifies that a plaintiff's ability to amend an
14 existing complaint to add a PAGA cause of action as a "matter of right" is limited to a
15 period of sixty (60) days following the statutory period during which the LWDA could
16 notify him of whether it intended to investigate. Based on the timing of when Plaintiff-
17 Relator should have received notice, the deadline to amend his existing complaint
18 hereunder to add a PAGA cause of action as a "matter of right" pursuant to Labor Code
19 § 2699.3(a)(2)(C) is September 13, 2021.

20 12. On July 13, 2021, Plaintiff-Relator's counsel – myself and co-counsel Alice
21 Chang – discussed on a phone call with Frank D. Kortum, Assistant United States
22 Attorney for the United States of America, the need to amend the TAC to add a cause of
23 action under PAGA. On the call, Mr. Kortum specifically requested to us that when
24 Plaintiff-Relator was ready to amend, that he should attempt to seek stipulation from all
25 government entities, similar to what was done in connection with the Third Amended
26 Complaint.

1 13. After diligently preparing a draft Fourth Amended Complaint and associated
2 stipulation, my co-counsel Alice Chang by email presented all government entities with
3 the draft stipulation for a request of leave to allow Plaintiff-Relator to amend the TAC to
4 add the PAGA cause of action.

5 14. In response, three of the four government entities signed the stipulation,
6 including Mitchell Neumeister from the California Department of Insurance Fraud
7 Liaison Bureau, John Fisher from the California Attorney General Bureau of Medi-Cal
8 Fraud and Elder Abuse, and Frank Kortum from the U.S. Department of Justice. A true
9 and correct copy of the partially executed stipulation is attached hereto as **Exhibit A**.

10 15. Unfortunately, Plaintiff-Relator was unable to obtain sign off from the Los
11 Angeles County District Attorney's Office despite repeated attempts to call and email
12 such party, attempts that took place up until this very morning.

13 16. However, I have received no indication, and I am aware that my co-counsel
14 has received no indication, that the Los Angeles County District Attorney's Office or any
15 other government party affirmatively opposes this amendment.

16 I declare under penalty of perjury under the laws of the United States and the State
17 of California that the foregoing is true and correct.

18 Executed this 7th Day of September, 2021 in Laguna Hills, California.

19 

20 _____
21 ELIOT J. RUSHOVICH
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EXHIBIT A

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1 Dated: September 1, 2021

WILBANKS AND GOUINLOCK, LLP

2 By: /s/ Marlan . Wilbanks

3 MARLAN B. WILBANKS

4 Attorneys for Relators

5
6 Dated: September 1, 2021

RISE LAW FIRM, PC

7 By: 

8 ELIOT J. RUSHOVICH

9 Attorneys for Justin Cheongsiatmoy,
10 M.D., in his individual capacity

11 Dated: September 1, 2021

12 By: 

13 ALICE CHANG

14 Attorneys for Relators and Justin
15 Cheongsiatmoy, M.D. in his individual
16 capacity

17 Dated: September 2, 2021

CALIFORNIA DEPARTMENT OF
18 INSURANCE FRAUD LIASON BUREAU

19 By: 

20 MITCHELL NEUMEISTER

21 Attorneys for the State of California

22
23 Dated: September 2, 2021

CALIFORNIA ATTORNEY GENERAL
24 BUREAU OF MEDI-CAL FRAUD AND
25 ELDER ABUSE

26 By: 

JOHN FISHER

27 Attorneys for the State of California

1 Dated: [____], 2021

LOS ANGELES COUNTY DISTRICT
ATTORNEY'S OFFICE

2 By: _____

3 STEVEN FRANKLAND
4 Head Deputy, Healthcare Insurance
Fraud Division

5 Attorneys for Los Angeles County

6 TRACY L. WILKISON

7 Acting United States Attorney

8 ABRAHAM C. MELTZER

9 Assistant United States Attorney
Chief, Civil Fraud Section

10 Dated: September 2, 2021

11 By: _____



12 FRANK D. KORTUM

13 Assistant United States Attorney
14 Attorneys for the United States of
America